

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 164 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? yes
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
2 to 5 No.
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DR. ANAND B KOTHARI

Versus

STATE OF GUJRAT

Appearance:

SERVED for Petitioners

MR.U.A.TRIVEDI,ADDL.PUBLIC PROSECUTOR for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 18/01/97

ORAL JUDGEMENT

By this application under section 482 of the Code of Criminal Procedure, the petitioners (petitioners No.1 and 4 have since been deleted) have sought quashing of the order dated January 9, 1984 whereby the learned

Judicial Magistrate, First Class, Surat, ordered to issue notice to show cause why process should not be issued on the complaint lodged by the respondent No.2 under section 500 of the Indian Penal Code read with sec.114 of the Code.

Mahavir General Hospital at Surat is run by a Public Charitable Trust. Petitioners No.2 and 3 were doctors in the said hospital at the relevant time. It appears that respondent No.2 lodged a complaint for the offence under section 304A read with Section 114 of the Indian Penal Code in the Court of the Judicial Magistrate First Class, Surat, against the petitioners herein, as wife of the respondent No.2 could not survive after treatment on her admission in Mahavir General Hospital on August 5, 1980. She was admitted in the said hospital on 24.6.1980 and after a prolonged period of 43 days, she succumbed to her illness. The said complaint by the respondent No.2 for the offence under section 304A is pending as per the averment made in the petition. It further appears that the pamphlet was sought to be produced along with the application Exh.15 wherein it was alleged that those who wanted to die should get themselves admitted in the hospital of the petitioners, namely, Mahavir General Hospital. On basis of the said pamphlet, the respondent No.2 lodged the aforesaid complaint for defamation under section 500 of the Indian Penal Code. The learned Magistrate has not taken cognizance of the complaint, nor ordered to issue any process in the matter. Only the notice to show cause why process should not be issued is ordered to be issued against the petitioners. Under these circumstances, it cannot be said that there is abuse of the process of the court.

It may be mentioned that inspite of notice having been served on the petitioners No.2,3 and 5, none of the petitioners has appeared. Therefore, there is no contention on behalf of the petitioners in support of the petition.

In the above facts and circumstances of the case, particularly when the process is not issued by the learned Judicial Magistrate, First Class, Surat, there cannot be said to be any abuse of the process of the Court. The petition itself is premature.

In the result, the petition is dismissed. Rule
discharged. Interim relief stands vacated.
